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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/180,374	04/12/1999	HEIKE RITTER	LEVER600X	6709

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UNILEVER  
PATENT DEPARTMENT  
45 RIVER ROAD  
EDGEWATER, NJ 07020

EXAMINER

PADEN, CAROLYN A

ART UNIT

PAPER NUMBER

1761

31

DATE MAILED: 01/08/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	Application No.	Applicant(s)
	09/180,374	RITTER ET AL.
	Examiner	Art Unit
	Carolyn A Paden	1761

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

1) Responsive to communication(s) filed on 09 December 2002.

2a) This action is FINAL.      2b) This action is non-final.

3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

4) Claim(s) 1-4 and 6-13 is/are pending in the application.

4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.

5) Claim(s) \_\_\_\_\_ is/are allowed.

6) Claim(s) 1-4, 6-13 is/are rejected.

7) Claim(s) \_\_\_\_\_ is/are objected to.

8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

9) The specification is objected to by the Examiner.

10) The drawing(s) filed on \_\_\_\_\_ is/are: a) accepted or b) objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

11) The proposed drawing correction filed on \_\_\_\_\_ is: a) approved b) disapproved by the Examiner.

If approved, corrected drawings are required in reply to this Office action.

12) The oath or declaration is objected to by the Examiner.

#### Priority under 35 U.S.C. §§ 119 and 120

13) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a) All b) Some \* c) None of:

1. Certified copies of the priority documents have been received.
2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

14) Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).

a)  The translation of the foreign language provisional application has been received.

15) Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

#### Attachment(s)

1)  Notice of References Cited (PTO-892)      4)  Interview Summary (PTO-413) Paper No(s). \_\_\_\_\_ .

2)  Notice of Draftsperson's Patent Drawing Review (PTO-948)      5)  Notice of Informal Patent Application (PTO-152)

3)  Information Disclosure Statement(s) (PTO-1449) Paper No(s) \_\_\_\_\_.      6)  Other: \_\_\_\_\_

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in a patent granted on an application for patent by another filed in the United States before the invention thereof by the applicant for patent, or on an international application by another who has fulfilled the requirements of paragraphs (1), (2), and (4) of section 371(c) of this title before the invention thereof by the applicant for patent.

The changes made to 35 U.S.C. 102(e) by the American Inventors Protection Act of 1999 (AIPA) do not apply to the examination of this application as the application being examined was not (1) filed on or after November 29, 2000, or (2) voluntarily published under 35 U.S.C. 122(b). Therefore, this application is examined under 35 U.S.C. 102(e) prior to the amendment by the AIPA (pre-AIPA 35 U.S.C. 102(e)).

Claims 1, 2, 4, 6 and 9 are rejected under 35 U.S.C. 102(e) as being clearly anticipated by Moreau et al.

Moreau discloses a corn fiber oil that contains 75% fat, 8% sterol esters, 4% free sterols, 6% diacylglycerols and 6% ferulate sterol esters. Applicant urges that Moreau does not teach an edible gel capsule. This has been considered but is not persuasive since the claims call for an

organo gel, which applicant defines as a "liquid fatty component and a mixture of sterols" at page 1.

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-6, 9 and 11-13 are rejected under 35 U.S.C. 103(a) as being unpatentable over Jandacek (1,413,102) in view of Moreau.

Jandacek discloses edible oils having hypcholesterolemic properties. Here the oil is fortified with 2 to 6% plant sterol. The oils contemplated for use in the product include clear, liquid glyceride oils and pure triglycerides (see page 1, column 2, lines 97-117). The foods prepared from the oil include peanut butter, mayonnaise, ice cream and margarine spreads. At page 3, column 2, lines 37-40, the inclusion of monoglyceride is indicated. The claims appear to differ from Jandacek in the recitation of the inclusion of a sterol ester. Moreau teaches that corn fiber oil contains 8% sterol esters, 4% free sterols and 6% ferulate sterol ester. It would have been obvious to one having ordinary skill in the art to select the corn fiber oil of Moreau as the edible oil product in Jandacek in

order to prepare a food product having hypocholesterolemic properties. In this case applicant is merely selecting a known oil for use in a food product for a known purpose.

Applicant argues that one would not select Moreau to product an organogel. This is disagreed with. Given the disclosure to Jandacek, one would certainly have the known oil that has hydrocholesterolemic properties at their disposal.

Claim 8 is rejected under 35 U.S.C. 103(a) as being unpatentable over Moreau as applied to claims 1-6 and 9-13 above, and further in view of Lansbergen or Sassen.

Claim 8 appears to differ from the reference in the suggestion that the product has a particular Stevens value. Each of Lansbergen and Sassen teach vegetable oil containing compositions that have Stevens values that fall within the level that is set forth in the claims. It would have been obvious to one of ordinary skill in the art to prepare an edible product having the Stevens value of the claims by using the edible oils of Lansbergen or Sassen.

Claims 5 and 10 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

It is unclear in claim 5 as to what is intended by the recitation “similar to that of the sterol applied” because it is unclear what the “sterol applied” is. Claim 10 is confusing because it uses “in the range of” twice in the claims. An amendment to the claims clarifying this issue would overcome the rejection.

Claim 7 is rejected under 35 U.S.C. 103(a) as being unpatentable over Jandacek in view of Moreau as applied to claims 1-6 and 9-12 above, and further in view of Cherukuri.

The claims appear to differ from Jandacek in view of Moreau in the recitation of the presence of oryzanol. Cherukuri teaches that oryzanol is an inherent component of rice bran oil. It would have been obvious to one of ordinary skill in the art to use the rice bran oil of Cherukuri in the composition of Jandacek for its antioxidant properties in preserving the composition of Jandacek and also in providing an oil source for the composition of Jandacek.

Claim 14 is rejected under 35 U.S.C. 102(b) as being clearly anticipated by Carlsson et al (5,716,639).

Carlsson discloses a lipophilic carrier preparation containing polar and non-polar lipids. At column 1, line 28 and column 3, lines 57-60, the non-polar lipids are defined to include vegetable oils and sterol esters. The product is stated to include polar and non-polar lipid material. The polar fraction is used to "shape and structure" the composition and "may lead to viscous systems, microemulsion gels" (column 4, lines 25-29). These compositions are referred to as reverse micelles or organo gels (see example 6).

A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 12-9-02 has been entered.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Carolyn A Paden whose telephone number is 703-308-3294. The examiner can normally be reached on Monday to Friday from 7am to 3:30pm.

The fax phone number for the organization where this application or proceeding is assigned is 703-305-7718.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-0661.

*Carolyn Paden*  
CAROLYN PADEN 1-7-02  
PRIMARY EXAMINER  
GROUP 1300-1761